

**FIFTH JUDICIAL DISTRICT
COUNTY OF LEA
STATE OF NEW MEXICO**

FILED IN MY OFFICE
DISTRICT COURT CLERK
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NELDA CUELLAR
Maria Torres

TEMPORASAN FALCON, an individual,)
)
Plaintiff,)
vs.)
)
STATE FARM INSURANCE COMPANY;)
ROSALVA FALCON; JOHN and JANE)
DOES I-X, BLACK and WHITE)
CORPORATIONS I-X; ABC)
PARTNERSHIPS I-X; and ABC)
ORGANIZATIONS I-X,)
)
Defendants.)

COMPLAINT
Tortfeasor - Motor Vehicle

D-506-CV-2016-00331

Case assigned to Sanchez, Mark

Plaintiff, in her claim against the Defendants and each of them, allege as follows:

1. Plaintiff Temporasan Falcon is a resident of Lea County, State of New Mexico.
2. Tortfeasor Morgan Browning is an individual residing in Lea County, State of New Mexico.
3. Defendant State Farm Insurance Company provided uninsured/underinsured motorist benefits at all relevant times to Rosalva Falcon, who is the owner of the vehicle operated by Plaintiff and wife to the Plaintiff. At the time of the accident Plaintiff had authorization to operate the vehicle owned by Rosalva Falcon and several policies maintained by State Farm exist under Ms. Falcon's household.
4. Multiple attempts have been made to resolve the matter and State Farm has declined arbitration, therefore this is the Complaint for a trial *de novo* as provided in Rosalva Falcon's insurance contract.

1 5. Defendants John and Jane Does I-X, Black and White Corporations I-X, ABC
2 Partnerships I-X and ABC Organizations I-X are and, at all times mentioned herein, were
3 persons, agents, servants, employees, corporations and/or business entities whose true names
4 and identities are not known to Plaintiff at the present time. Plaintiff alleges, upon information
5 and belief, that these Defendants are citizens and/or residents and/or authorized to do business
6 and/or doing business, and/or operating in Lea County, New Mexico. At the present time,
7 Plaintiff does not have the true names of John and Jane Does I-X, Black and White
8 Corporations I-X, ABC Partnerships I-X and ABC Organizations I-X. However, at such time
9 as any of these true names are ascertained, Plaintiff will seek leave of this Court to amend
10 Plaintiff's Complaint to reflect the true identities of these individuals and/or entities, together
11 with the appropriate charging allegations.
12

13 6. Pursuant to NMSA 38-3-1, this action properly lies in the Fifth Judicial District
14 Court for the County of Lea in the State of New Mexico because, upon information and belief,
15 (1) Defendants do business within, reside in, or has significant contacts within Lea County,
16 New Mexico and (2) a substantial part of the events or occurrences giving rise to this claim
17 occurred in Lea County, New Mexico.

18 7. Pursuant to the statutory and constitutional laws of the State of New Mexico,
19 this Court has jurisdiction over the parties and the subject matter of this action.
20

21 **FACTS AND PRELIMINARY STATEMENT**

22 8. On March 18, 2013, at approximately 8:13 a.m., Plaintiff was operating Rosalva
23 Falcon's vehicle westbound on Marland at the intersection of Continental when the Tortfeasor
24 ran the stop sign causing a violent accident to occur.
25

1 9. The cause of the automobile collision was driver inattention by the Tortfeasor,
2 Serrano, who was cited for "careless driving".

3 10. As a direct and proximate result of the collision, Plaintiff suffered personal
4 injuries.

5 11. Plaintiff's injuries are serious and will last indefinitely into the future.

6 12. Plaintiff has incurred past medical care, treatment and expenses and will incur
7 future medical care, treatment and expenses due to this collision.
8

9 **COUNT I: NEGLIGENCE**

10 13. As a direct and proximate result of the collision, Plaintiff suffered personal
11 injuries.

12 14. At the aforesaid date and place, Tortfeasor had a duty to exercise ordinary care
13 to prevent an automobile collision.

14 15. Tortfeasor had a duty to keep a proper lookout so as to avoid placing Plaintiff in
15 danger and to prevent this automobile collision.

16 16. Tortfeasor had a duty to exercise ordinary care in approaching the intersection
17 and stop for traffic that had the right away.

18 17. Tortfeasor knew or should have known that by failing to exercise ordinary care,
19 by failing to keep a proper look out and stop for the posted stop sign that her conduct posed an
20 unreasonable risk of harm to Plaintiff.

21 18. Tortfeasor breached her duties to Plaintiff, which breach directly and
22 proximately caused Plaintiff to suffer injuries and damages including, but not limited to, great
23 physical pain and suffering, medical expenses, emotional distress, pain and suffering and future
24 loss of life's enjoyment.
25

1 19. Tortfeasor was an underinsured motorist and did not have sufficient insurance to
2 pay for his misconduct.

3 20. Defendant, as Ms. Falcon's UM/UIM insurer, is responsible for paying all
4 damages sustained by Plaintiff, up to the amount of insurance coverage.

5 **COUNT II: BREACH OF CONTRACT**

6 21. Plaintiff incorporates by reference all prior allegations as if set forth herein in
7 full.

8 22. Defendant State Farm's acts and failures to act, as enumerated above, constitute
9 a willful breach of its Contract with Plaintiff.

10 23. Plaintiff is a third-party beneficiary to the contract Ms. Falcon had with
11 Defendant State Farm. A third party may be a beneficiary of a contract, and as a beneficiary has
12 an enforceable right against Defendant State Farm to the contract.

13 24. Ms. Falcon performed all conditions precedent to her contract with Defendant
14 State Farm.

15 25. As a direct and proximate result of the breach of the Contract by Defendant
16 State Farm, Plaintiff has suffered monetary damages necessary to restore to them that which
17 was lost by Defendant State Farm's breach, including but not limited to incidental damages,
18 consequential damages and reliance damages, attorney fees and costs and any other damages in
19 an amount to be determined at trial.

20 26. Defendant State Farm's acts and failures to act, as enumerated above, constitute
21 an unreasonable failure to pay a first party coverage claim, entitling Plaintiff to an award of
22 reasonable attorney fees and costs pursuant to NMSA 1978, §39-2-1.
23
24
25

1 27. Pursuant to the parent's auto policy maintained through State Farm, the Plaintiff
2 is entitled to Uninsured Motorist Coverage.

3 28. State Farm contests the amount claimed to be paid to the Plaintiff under the UM
4 portion of the insured's policy.

5 **WHEREFORE**, Plaintiff prays for judgment against Defendant for all special damages
6 and general damages as determined at trial, together with the costs of this litigation, pre-
7 judgment and post-judgment interest, reasonable attorney fees and costs, punitive damages, as
8 well as an early mediation at Defendants' expense as set forth in NMSA 1978 §57-12-1 et seq;
9 and for such other relief as the Court may deem just and proper.
10

11 DATED this 17th day of March, 2016.
12

13 ZEBAS LAW FIRM, L.L.C.

14 By: /s/Joseph M. Zebas

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19 *Attorney for Plaintiff*
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